



DATE: 6- October 2010

APPROVED BY:

*ju3*

**MINUTES OF THE  
LAKE COUNTY PLANNING COMMISSION  
September 28, 2010**

The Lake County Planning Commission hereby finds and determines that all formal actions were taken in an open meeting of this Planning Commission and that all the deliberations of the Planning Commission and its committees, if any, which resulted in formal actions, were taken in meetings open to the public in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Chair Pesec called the meeting to order at 7:00 p.m.

**ROLL CALL**

The following members were present: Messrs. Adams, Brotzman, Morse, Schaedlich, Siegel, Welch, (alt. for Aufuldish) and Mmes. Hausch and Pesec. Staff present: Messrs. Boyd, Radachy, and Ms. Myers.

Mr. Boyd informed the Board that Mr. Bill Martin will be resigning due to increased time commitments from other work activities.

**MINUTES**

There were two corrections suggested to be made to the July 27, 2010 minutes as follows:

- Page 2, below Community Development Block Grant, the last sentence in the first paragraph, the words "role in these programs" should be replaced with "duties".
- Page 4, below Land Use and Zoning Review, the end of the last sentence of the first paragraph should be moved up to connect with the first part of the sentence.

Mr. Morse moved and Ms. Hausch seconded the motion to approve the August 31, 2010 minutes with the above-mentioned changes.

Seven voted "Aye".  
One abstained.

## FINANCIAL REPORT

Mr. Schaedlich moved and Mr. Siegel seconded the motion to approve the August, 2010 Financial Report.

All voted "Aye".

## PUBLIC COMMENT

There was no comment.

## LEGAL REPORT

Mr. Eric Condon, Assistant Prosecutor, stated there was no legal report.

## DIRECTOR'S REPORT

Mr. Boyd stated Mr. Radachy had officially started work on the Fairport Harbor waterfront district along the Grand River. A meeting was held a couple weeks ago with a Councilman, the Village Administrator, and a few others. They decided to break down the whole waterfront into small districts. They will start at the mouth of the Lake and Grand River and then work their way up the River. This is in accordance with the Fairport Harbor Comprehensive Plan that staff worked on a number of years ago as well as the Coastal Plan. He met last week with their Planning Commission and we will be meeting again sometime in October. There is an hourly agreement in place for compensation for time and materials on this project. Community meetings will be set up when this is done.

The Balanced Growth Initiative Program is moving along according to our timeline. Mr. Boyd will be shuttling all the maps to Madison Township, the three Perry's, Painesville Township and Fairport Harbor for the watershed plan on which we are working.

We are setting up a meeting with Commissioner Claypool and Mr. Albert Dispenza, Jr., Planning and Community Services Director, of Ashtabula County about a cooperative lakefront plan initiative. Mr. John Loftus is organizing this meeting.

We are still participating in the Community Block Grant Program. We are now starting to focus on the actual Community Development Program as opposed to the Neighborhood Stabilization Program that we were working on last month. We met our September 18, 2010 deadlines. Now we are working on various reporting and paperwork that has to be submitted on behalf of HUD.

Mr. Siegel said the waterfront project in Perry Township was completed and everyone seems happy with the results.

Ms. Pesec asked where staff was on the Concord riparian setbacks and was told that our staff and the Lake County Soil and Water Conservation District have reached out to Concord Township to offer our services.

## ANNOUNCEMENT

There were no announcements.

## SUBDIVISION REVIEW

### Madison Township - Minor Subdivision Variance

Mr. Radachy introduced the first item to be discussed, which was a minor subdivision variance request in Madison Township. Mr. Benjamin Aveni is the agent. The surveyor is Mr. Tim Stocker of Crabbs Surveying. The property is to be split in 1.9 acres with 1.3 acres remaining. There are currently agricultural buildings on the split side and a house, garage and accessory building on the remainder lot.

The owner wishing to split the property wants to continue the agricultural use on the property. Per Article III, Section 10, B4, the applicant is required to receive Health District approval for proposed lot splits where sanitary sewer is unavailable. The owner went through the process and was told they were not able to put a septic tank on the property because the lot does not appear to be of adequate size for the primary and duplication areas needed for a sewage system. Also, there was not adequate isolation distances from existing or proposed private water supplies because the existing barns and barnyards constitute disturbed areas. No residence is planned in the immediate future.

The location of the property is at 5852 Middle Ridge Road just west of Dayton Road and east of McMackin Road. Agricultural property surrounds it. The Auditor is taxing the property as livestock with a 111 code and already has an agriculture designation. The owner submitted an affidavit for agricultural use which is usually used for lots over five acres. A farmer or someone with an agricultural use has the right to ask for an exemption from some of our rules and split the lot by filling out this form when they have over five acres. This owner completed the form as a good faith effort to say that they agree to the same rules and regulations that is placed on the properties with five acres. One of those restrictions is that they agree to come back if they want to do a residential use and show us their septic approval after they have done what is necessary to their property to conform to the Health Department's rules. This property has been with this family for 100 years.

Staff recommended approval of the variance request.

Mr. Siegel moved to approve this minor subdivision lot split variance and Mr. Adams seconded the motion.

All voted "Aye".

#### Concord Township – Mountainside Farms, Phase 4, Final Plat Extension

Mr. Radachy introduced the subdivision as being Mountainside Farms, Phase 4 in Concord Township. Mountainside Farms, LLC is the developer and Gutosky and Associates, Inc. is the surveyor. It consists of two blocks on approximately 20.89 acres. This is the fifth phase of the original subdivision that was approved October 30, 2001. Phase 4 was approved with 11 sublots on 8.3 acres on October 30, 2005. This phase will connect Mountainside Farms to Morley Road and was approved by this Board on October 28, 2008.

Our new rules state that any final plat that is not recorded within two years of approval will expire on October 31, 2010. If this phase is not recorded by that date, the plat would have to be resubmitted. It is currently zoned as R-1. The proposed agency comments are listed below:

#### Proposed Comments:

1. There is no standard for the length of the extension. The regulations only state that you may apply for an extension. *Article III Section 7(F)*
2. The improvement plans have been accepted or approved by all agencies except the Lake Sanitary Engineer, the Secretary or Chair of the Planning Commission and the Board of County Commissioners. *Lake County Planning Commission*
3. Mountainside Farms Phase 4 has an approved Erosion and Sediment Control Plan for the proposed construction of Karaboo Trail to Morley Road and for the proposed reclassification of the dam and associated pond. The ESC permit was issued September 1, 2010 and is valid for two years. *LCSWCD*
4. The District has no issue with the project currently. *LCSWCD*
5. No objection to a 2 year extension for the filing of the final plat. *L. C. Utilities*

6. Our office has no objections to the request for the extension for the filing of the final plat for Mountainside Farms, Phase 4. *L. C. Engineer*
7. Defer to the Planning Commission for placing limitations on the number of years extended. *Concord Township*

The improvement plans have been approved or accepted by all agencies except the Planning Commission, the Sanitary Engineer, and the Board of Lake County Commissioners. They will be able to start construction once they get these signatures. None of the reviewing agencies had any issues. The Subdivision Regulations do not recommend a time period for extensions. Concord Township is deferring to our judgment on the length of time of approval.

The staff is recommending a one-year final plat extension. This is only a market-based extension request and a one-year final plat extension is consistent with the actions this Commission has taken in the past.

Mr. Schaedlich moved to approve the extension request for a one-year extension for the Mountainside Farms, Phase 4 final plat and Mr. Welch seconded the motion.

All voted "Aye".

#### Subdivision Activity Report

The Cambden Creek, Phase 2 subdivision is going through its final review stages. Mr. Radachy stated we are working out issues with the final plat and signatures. It is currently in maintenance. As soon as the final plat is approved by the County Prosecutor and accepted by the County Commissioners, it can be recorded.

Mr. Radachy stated the County Engineer stated they were ready to turn Kimball Estates II, Phase 1 over to the County Prosecutor to attempt to get the construction surety to correct issues that were currently deficient.

Mr. Brotzman asked what the legal process would be on this issue. Mr. Condon thought it would go right to the surety. He had been in on some of the discussions. The County will then take it over and see the work gets done. He thinks the developer has had his chance.

Mr. Boyd said they would check to see what issues the County Engineer will be pursuing with the County Prosecutor on this phase of the subdivision.

When asked what would be done if the Construction Surety would not be enough to cover all the costs, Mr. Condon stated that they were getting ahead of themselves and that the legal case would have to be won first. There could be a long fight before they would be at the point when they would be choosing contractors and how much it would cost.

Mr. Radachy stated that, according to our Subdivision Regulations, once the sureties are accepted by the County Commissioners, the developer has two years to complete the project. If he fails to complete the improvements within those two years, the County Engineer can take the surety and finish the project for him. In this case, it has been more than two years. The surety was accepted in 2004 and the County Engineer could have taken the surety in 2006. This surety was signed by a bank and held by a letter of credit. He also explained the complete surety process for this subdivision phase and there was further discussion concerning the bond not being provided in a timely manner, and some inspection problems.

#### Lake County Subdivision Regulations Draft Amendments

Mr. Boyd stated that Mr. Radachy has been working on these Subdivision Regulations draft amendments for about a year. We had set a goal to have these in writing by September for the Commission to review. Mr. Boyd complimented him on the great job he did in getting these white papers together concerning some of the current issues we have been having and in writing the following potential amendments. This is not a formal start of the amendment process, but Mr. Boyd hoped it would help the Commission members get an understanding of the recurring themes. By presenting them tonight, staff was hoping to get some feedback from the members. Mr. Radachy added that he thought the presentation in this format might be clearer and easier to understand than the cross-out format he had used in the past.

Mr. Condon said the Prosecutor's Office had not reviewed these yet and that the members should be looking more at the ideas than grammar and format.

#### Clearing and grubbing on proposed subdivision sites – Article I, Section 4 and Article II

There had always been a debate in the past on what the developer can and cannot do when these variances come before us. Our rules are silent on this issue. The regulation will state that a developer can go in and take the trees off and remove the brush, but cannot remove the stumps, which is considered grading. This has been a policy we have been following, but not a rule. We are basically defining grubbing. This will state that you can clear after the improvement plans have been accepted by the Board. Grubbing will not be allowed until after the Lake County Soil and Water Conservation District has approved a Sediment Control Plan, etc. There is a \$1,000 fine involved.

A couple members were concerned that we might be asking the developer to do something as a two-step process that could be done as a one-step process. Mr. Radachy said the developer can do it as a one-step process after the improvement plans have been accepted by the County Commissioners and they start the regular construction or they can ask this Board to be allowed to do the one-step process through a variance procedure with a Sediment Control Plan in place.

Another member raised a concern that right now we were looking at extending preliminary plans and final plats because people cannot afford to build, but if someone cut in a road and grubbed it, it could be just plain dirt for a couple of years.

Mr. Condon stated that if they could truly prove that they are ready to go right now with the construction, they would probably be able to get a variance. By setting the rule, you maintain control. Without the rule, you would have the occasional person who did not follow through for whatever reason and the soil may be eroded.

Staff will work with the Lake County Soil and Water Conservation District and the developers on this issue.

#### Maximum number of extensions for preliminary plan approval

Mr. Radachy explained that staff was setting a maximum of three extensions on preliminary plan approvals of one year for each extension. There is an allowance of three years from the regular preliminary plan approval and then three one-year extensions after that point, totaling to six years to complete the plan.

Mr. Brotzman asked what the fee was for an extension and was told there was no fee. It was decided that a fee should be considered at next month's meeting.

Mr. Adams presented a question of setting a metric to help make the decision of granting these requests, such as a rolling three-year period of housing starts or sales or something like that. Most of the extensions have been requested because of financial reasons and he questioned granting them when the economy gets better.

Ms. Pesec stated that there could be a lot of reasons for an extension and Mr. Schaedlich stated that you really needed to take them on a case-by-case basis. You cannot anticipate what everyone's reason would be. He thought they could rely on staff's recommendations and the common knowledge of what is going on in the economy.

Mr. Radachy informed the members that there are currently about 600 lots in inventory. This large inventory will still take a while to get through even when the economy starts moving again.

Ms. Pesec was also concerned about developers using six-year old Subdivision Regulations. Mr. Radachy replied to her concern saying the Commission can choose to grant the extension. If the Regulations have changed dramatically in an area that concerns the request, the Commission can choose not to grant the extension. It becomes a resubmission if they are willing to comply with the new Regulations.

Mr. Radachy continued saying one major issue being grandfathered on the extension of preliminary plans was on the maintenance periods being extended from two to three years.

#### Final plat extensions

Current language states the final plat approval will expire if a final plat is not recorded within two years. The language allows the developer to apply for an extension, but is silent on length of time and number of extensions allowed. Basically, the staff wrote in a one-year extension with a maximum of two extensions. This would be a four-year approval window for a final plat.

#### Removal of temporary cul-de-sacs

Prior to the 2009 Regulations, the previous developer was to post a bond to remove the temporary cul-de-sac so the future developer could use that money to remove it. Some temporary cul-de-sacs could be in the ground for twenty years and the bonds are never accepted. Staff realized the Subdivision Regulations were silent on who removes the pavement of the temporary cul-de-sac when the road is extended and who sets the property pins for lots in the existing temporary cul-de-sac. The proposed revision states the new applicant/developer of the road extension will be responsible to do both.

#### Maintenance guarantee in a timely manner

Mr. Radachy stated the Regulations state that the maintenance amount shall be included in the initial construction or performance guarantee, but there is no language that would allow the Commission to convert a construction or performance guarantee into a maintenance guarantee or specify how long we can hold funds in the surety as a maintenance guarantee.



### Developers providing maintenance bond for work performed by their contractors and subcontractors

Staff had reviewed nine other counties on this issue and found all of them stated the applicant shall provide the maintenance bonds. The staff is looking to amend Lake County's applications to state that the developer will provide the maintenance bonds and sign it. The Regulations currently allow for the developer to provide a bond, cash or letter of credit. This will also be a standard comment at the pre-application meetings and it will also be stated in the official correspondence.

Mr. Boyd stated that a particular developer was claiming that he could not post bonds himself because he did not physically perform the work. He had taken this to the County Commissioners saying it was slowing down the development process. This is still up for debate. Ms. Patricia Nocero replied to a memorandum from Mr. Radachy stating that we can indeed require the developer to be the one entity who posts the bonds. Concentrating on "practical difficulties", is there true cases in the field where a developer cannot get a bond on behalf of contractors in the field? This may again lead to another situation where a variance is ready to be heard.

Mr. Radachy said we keep referring to a bond, but technically, our Regulations allow the developer to provide a choice of a bond or a maintenance surety. A maintenance surety can be a letter of credit, passport or cash.

### Inspection and testing costs are not being paid in a timely manner

Inspection fees were not being collected in a timely manner. The Regulations are being changed to add that all inspection and testing costs have been paid to the County Engineer and the Utilities Department prior to the final plat being filed.

Mr. Siegel asked Mr. Condon if there was any reason the Planning Commission could not do inspections and he simply stated they did not have an Engineering Degree. Mr. Siegel suggested hiring someone who had an engineering degree to do this. Mr. Radachy stated this had not been explored, but Stark County Regulations refer to the "Subdivision Engineer". He believed that person was a P.E. who was hired by the Planning Commission to supervise the subdivision process. Mr. Radachy was asked to talk to Stark County for more information on how they did this.

Everyone thanked Mr. Radachy for his good work on this project and Mr. Siegel appreciated him being at a meeting at the township just to answer some of the questions he, the developer and their engineer had on a development issue.

Mr. Boyd decided to have an internal meeting with the Lake County agencies involved in subdivisions to get their input on these issues before the changes are submitted for formal action of the Commission.

#### LAND USE AND ZONING REVIEW

Letters from the Perry Township and Madison Township trustees were received after the August meeting wanting to keep their current representatives on this Committee. They are Ms. Lora Diak and Mr. Jerome Klco from Madison Township and Dr. Aven Malec and Mr. Mark Welch from Perry Township. The Chair gave approval of these reappointments at the August meeting pending the township trustees' notification of their desire to retain them on the Committee.

#### REPORTS OF SPECIAL COMMITTEES

There were no reports.

#### CORRESPONDENCE

There was no correspondence.

#### OLD BUSINESS

There was no old business.

#### NEW BUSINESS

There was no new business.

#### PUBLIC COMMENT

There was no public comment.

#### ADJOURNMENT

Mr. Siegel moved to adjourn the meeting at 8:17 p.m. and Mr. Welch seconded the motion.

All voted "Aye".